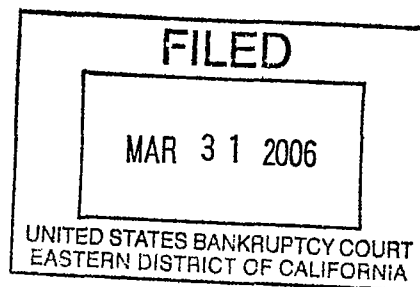


(8)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 05-31400-C-7
ANN ESLINGER,)	Adversary No. 05-2378
)	
Debtor(s).)	
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JEANIE VANETTI,)	
)	
Plaintiff(s),)	
v.)	
ANN ESLINGER,)	
)	
Defendant(s).)	



FINDINGS OF FACT AND CONCLUSIONS OF LAW

Trial was held in this adversary proceeding on March 30, 2006, to determine the discharge status of a state court judgment. The court now renders its findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052.

JURISDICTION

Jurisdiction is founded on 28 U.S.C. § 1334. This is a core proceeding that a bankruptcy judge may hear and determine. 28 U.S.C. § 157(b)(2)(I).

36

FINDINGS OF FACT

Plaintiff Jeanie Vanetti rented to defendant Ann Eslinger premises commonly known as 340 Calmace Drive, Dixon, California, beginning March 1, 1998, pursuant to the terms of a written lease.

The landlord terminated the leasehold by giving a notice to vacate on approximately July 26, 2004. The defendant vacated the premises on approximately October 6, 2004.

When rented, the structure was an older building that was in average condition. The carpet, while not new, was in serviceable condition. Because the transaction was eligible for so-called "section 8" rental subsidies, housing authorities inspected the premises for defects and noted several defects of a minor nature.

When originally rented, the occupants were to be the defendant and two grandchildren. At some point during the tenancy, one of the grandchildren moved out and the defendant's son moved into the premises.

The lease contained a clause forbidding pets without the prior permission of the owner and then only upon the payment of a \$200 "pet fee." At the time the tenancy began, the landlord gave authority for the defendant to have one "teacup" poodle. During the tenancy, there were as many as four dogs inside the house. There was also a cat that, although described as an outside cat, was frequently viewed by the landlady to be inside the house.

During the tenancy, the personal relations between landlord and tenant were strained. The landlord on several occasions required the tenant to remove accumulated "junk" from the garage and brought other matters regarding the upkeep of the premises to

1 the attention of the tenant in a fashion that the tenant did not
2 welcome.

3 Defendant's son at one point worked as a maintenance
4 landscape employee at a golf course and apparently did shop-type
5 work in the garage. He also installed an electrically operated
6 lawn sprinkler system. During the summer of 2004, he removed the
7 water supply shut off valve to the structure, leaving the shut
8 off value in the street at the water main as the sole method of
9 shutting down water supply to the structure.

10 A boxed fan was also installed in the ceiling above the
11 water heater, again apparently by the defendant's son, in a
12 manner that did not meet basic craftsman work of the building
13 trade.

14 There was a light fixture in the kitchen that became
15 inoperable apparently during the summer of 2004 and was perceived
16 to be sparking. The defendant's son disconnected the wire in the
17 ceiling and replaced the fixture in a manner that turned out to
18 be unsafe because the disconnected wire lay in contact with the
19 metal ceiling fixture such that, if the light switch was turned
20 on, anyone touching the fixture would receive a shock.

21 Also, during the summer of 2004, an unsafe electrical
22 modification was made at the switch box in the garage, apparently
23 by the defendant's son, the result of which was that a circuit
24 with a 220 volt current was connected into a 110 volt power strip
25 without a proper converting device being installed. Moreover,
26 the electrical switch box was left in a state that would be
27 unacceptable to anyone in the building trades, as well as
28 probably being unsafe.

1 The landlord terminated the lease because she believed that
2 there had been an unacceptably high number of police visits to
3 the house by the Solano County Sheriff's Office during 2003 and
4 2004.

5 When the defendant vacated the premises, with the assistance
6 of her son, several items of damage incident to the move
7 occurred. The U-haul truck was backed up to the front door
8 leaving tire tread depressions in the lawn. In addition, the
9 truck twice was backed so close to the house that the top of the
10 truck dented the roof gutter.

11 On October 6, 2006, after the premises had been vacated, the
12 plaintiff landlord's contractor walked through the premises. The
13 stench of accumulated pet urine in the carpet necessitated
14 removal of all carpet from the house, which carpet had been in
15 serviceable condition six and one-half years earlier. It was
16 apparent that standards of cleanliness had been low, and, in the
17 opinion of the contractor, the wear and tear was greater than
18 what he would have regarded as normal following an occupancy of
19 six and one-half years.

20 The general contractor had assisted the landlord in
21 preparing the premises for initial occupancy in 1998 and had been
22 on the premises to do routine maintenance repairs during the
23 course of the tenancy. On one occasion on the premises, the
24 defendant had indicated to him that she did not like the
25 plaintiff. He recalled her characterization of the landlord as
26 "bitch." As noted, the feelings apparently were mutual.

27 Following the termination of the tenancy, the plaintiff
28 refused to return the security deposit. A dispute ensued. The

1 net result was the plaintiff landlord obtaining a judgment in
2 small claims court for approximately \$2,800, and she was not
3 required to return the security deposit. The correspondence
4 during that period, which is in evidence, includes a number of
5 unopened letters on which the defendant wrote comments that
6 testify to her animosity to the plaintiff, and that tend to
7 confirm the contractor's testimony regarding the language that
8 the tenant earlier had used to describe the plaintiff.

9
10 CONCLUSIONS OF LAW

11 The question is whether the money judgment that the
12 plaintiff obtained against the defendant is excepted from
13 discharge under 11 U.S.C. § 523(a)(6), which requires that injury
14 to plaintiff have been willful and malicious. The United States
15 Supreme Court has established the standard in the leading case of
16 Kawaauhau v. Geiger (In re Geiger), 523 U.S. 57 (1998). The rule
17 from Geiger has been further refined by the Ninth Circuit to
18 entail a subjective approach to the requirement of willfulness
19 such that a defendant must have subjective belief that injurious
20 consequences were substantially certain to result from the
21 conduct in question. Carrillo v. Su (In re Su), 290 F.3d 1140
22 (9th Cir. 2002). In addition, malicious conduct must necessarily
23 cause injury. Petralia v. Jercieh (In re Jercieh), 238 F.3d 1202
24 (9th Cir.), cert. denied, 533 U.S. 930 (2001).

25 The court is persuaded that the damage that occurred to the
26 premises during the tenancy of the defendant did exceed the
27 standards of normal wear and tear. It is plain that the
28 defendant was not entitled to the return of her security deposit,

1 and the state court has fixed the total amount of damages at
2 approximately \$2,800. The question is whether the various items
3 of damage meet the standards established by the decisions of the
4 Supreme Court and the United States Court of Appeals for the
5 Ninth Circuit.

6 The court is persuaded that the damage, although greater
7 than normal wear and tear, was not inflicted with intent to cause
8 damage or in circumstances in which the actor subjectively
9 believed that damage was substantially certain to result. To be
10 sure, there is considerable animus against the plaintiff on the
11 part of the defendant. Nevertheless, the court is not persuaded
12 by a preponderance of the evidence that the circumstances in
13 which the subject damage occurred were willful and malicious
14 within the meaning of § 523(a)(6). Hence, a judgment will be
15 entered determining that the debt is dischargeable.

16 Dated: March 31, 2006.

17 
18 _____
19 UNITED STATES BANKRUPTCY JUDGE
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CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Jeanie Vanetti
PO Box 368
Dixon, CA 95620

Douglas B. Jacobs
20 Independence Cir
Chico, CA 95973

Dated: APR - 3 2006


DEPUTY CLERK

Sarah Milton


UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Office of the U.S. Trustee
501 I St, #7-500
Sacramento, CA 95814

DATED: APR - 3 2006

By: 
Deputy Clerk

Sarah Milton

EDC 3-070 (New 4/21/00)